

PART IV
SCHOOL NUTRITION PROGRAM AGREEMENT

A. THE STATE AGENCY AGREES THAT:

1. To the extent of funds available, it will reimburse the School Food Authority (SFA) for the programs operated by it, as designated in Part 1B, in accordance with meals or milk served to children in the indicated program(s) in schools, during the effective period of this agreement;
2. It will assign rates of reimbursement paid to the School Food Authority for lunches, breakfasts, snacks, and/or milk served to children in each school according to United States Department of Agriculture (USDA) guidelines. The SA shall promptly notify the SFA of any change in the minimum meal requirements or the assigned rates of reimbursement.
3. It assumes the responsibility for disseminating the public release for the free and reduced price policy found in Attachments to the agreement and policy statement;
4. For Severe Need School Breakfast Programs (SBP) only: For Severe Need School Breakfast Programs (SBP) only: To qualify, a site must have served 40% or more free or reduced-price lunches in the second prior year. The agency must elect to receive the Severe Need Breakfast Program rate. See Part 2 (C) of the School Nutrition Program application; and Severe Need Breakfast Program Attachment;
5. For Especially Needy National School Lunch Programs (NSLP) only: To the extent of funds available, two (2) cents additional section 4 reimbursement will be paid to any SFA which served 60% or more of all lunches to children that qualified for free or reduced lunches during the second preceding year.
6. Effective October 1, 2012, for SFAs with certified menus, the SA will reimburse at the extra performance based reimbursement (6 cents per lunch for the '12-13 school year) beginning with the month that certified menus are served and will continue that payment unless a review determines that menus do not meet requirements. The performance based reimbursement rate will be adjusted annually following the formula criteria.

B. THE SCHOOL FOOD AUTHORITY AGREES THAT:

1. For each school listed in Part 1F it will serve meals and/or milk and it will conduct the indicated program(s) in accordance with State Agency policy and applicable federal policies and regulations 7 CFR parts 210, 245, 215, and 220, and, specifically, will conform to the requirements in the conduct of each applicable program. Certified menus shall be served in order to earn the performance-based reimbursement for lunch and that failure to maintain service of eligible menus shall result in loss of reimbursement. SFAs shall annually attest to the service of meals that meet the meal pattern requirements
2. A nonprofit food service or milk program will be operated, using program income only for program purposes, and observing limitations on use of program income set forth in 7 CFR 210.9(b)(1), 210.14(a), 7 CFR 220.7(e)(1), and 7 CFR 215.7(d)(1);
3. Competitive foods be made available only during such time and places and include only items as allowed NSLP regulations as set forth in 210.11(b) or as revised as 210.11 effective July 1, 2014. Such additional rules or regulations as are necessary to control the sale of foods in competition with meals served under the program will be established. No direct or indirect restrictions on the sale or marketing of fluid milk on school premises or at school-sponsored events, at any time or in any place, in schools participating in the National School Lunch Program.

4. Full accountability for Child Nutrition programs will be maintained at levels established by state and federal laws and regulations and, where applicable, the school accounting manual issued and approved by the State Department of Legislative Audit will be followed (210.9, 210.14 (c), and 7 CFR part 3015 and 7 CFR part 3016, or 7 CFR part 3019, as applicable);
5. Arrangements will be made to have an Organization-Wide Audit conducted in accordance with the provisions of the Federal Office of Management and Budget Circular A-128 or A-133 whenever more than \$500,000 is received from all federal sources annually.
6. Upon request, all accounts and records pertaining to its school food service, including National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, and/or Special Milk Program, will be made available to the State Agency or its designee(s), to USDA Food and Nutrition Services, and to the Office of Inspector General for audit or review at a reasonable time and place. These records shall be retained for a period of three (3) years after the end of the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the three (3) year period as long as required for the resolution of the issues raised by the audit. Such records include all applications for free and reduced price meals or free milk submitted by families; permanent agreement, policy statement, and addendum; and audits, as well as those outlined in Part 4(B)(33),
7. An EXACT daily count taken at point of service of eligible paid, free, and reduced price meals or milk served to children, and number of meals served to adults will be maintained unless this is an approved Special Provision School (7 CFR 210.7(c)(3) and 210.9(b)(9));
8. Reimbursement will be claimed only for complete meals or milk specified in this agreement served to eligible children enrolled at the school in a program accredited or approved by the Department of Education at the rate(s) assigned by the State Agency. Reimbursement will be claimed for only one meal per child per day at each respective meal service. Meals and milk served to adults will be excluded from reimbursement claims (210.7(c)(v), 215.10(e), 220.11(b), and 220.7(c)(6));
9. Except for Residential Child Care Institutions (RCCIs), reimbursement for breakfasts and lunches will be claimed only on days when educational school activities that count toward classroom requirements take place as approved by CANS. Afterschool snacks shall be claimed only on school days when educational or enrichment activities are offered.
10. Claims for reimbursement will be submitted in accordance with procedures established by the State Agency. Claims are due in the State Agency by the 10th of the month following the month being claimed. Claims for reimbursement not filed within sixty (60) days past the month being claimed will be disallowed. Adjustments to claims must be made within 90 days from the end of the month being claimed. Any exception to this requirement will be made at the discretion of the State Agency and USDA's Food & Nutrition Services Regional Office (7 CFR 210.8);
11. Meals or milk which meet the requirements prescribed in 7 CFR parts 210, 215 and/or 220 will be served during appropriately designated periods;
12. Meals will be priced as a unit, except when no specific charge is made in nonpricing meal programs as described in the application [210.10(a)(2)]. The school will collect from adults an amount equal to the meal cost (food, labor, and other) plus at least the per meal value of USDA donated commodities and the rate of reimbursement for a paid student meal. If meal cost is not known, the adult meal charge shall be equal to the highest student charge plus the per-meal value of USDA foods and the rate of reimbursement for a paid student meal. Student meal price shall be determined annually following the guidance and tools of the Paid Lunch Equity rule; ;

13. Lunches, breakfasts, and snacks, as applicable, will be made available in pricing programs in compliance with 7 CFR 245 without cost or at a reduced price to all children who are determined under the School Food Authority's current approved free and reduced-price policy statement to be unable to pay the full price (7 CFR 210.9). Free milk will be made available in Option 2 Special Milk Program to all needy children whenever it is provided under the Special Milk Program;
14. Free potable water will be made available to children for consumption, as nutritionally appropriate, in the cafeteria during lunch service and beginning in '14-15 for breakfast service;
15. Documentation of eligibility for free meals or milk and reduced price meals shall be maintained including
 - a. Source documentation and names of children who are directly certified as eligible for free meals based on eligibility from Special Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), or Food Distribution Program on Indian Reservations;
 - b. Source documentation and names of children who are directly certified as eligible for free meals based on determination to be homeless, runaway, or member of a migrant family;
 - c. Source documentation and names of children who are directly certified as eligible for free meals based on determination of enrollment in Head Start;
 - d. Source documentation and names of children who are directly certified as eligible for free meals based on placement as a foster child;
 - e. Applications from families listing a case number for SNAP, TANF, FDPIR or designation making them categorically eligible for free meals;
 - f. Approved and denied applications from families designating a child as a foster child;
 - g. Approved and denied applications from families listing household members and income.
16. Application documentation shall be completed at household level rather than individual children. The children's names and documentation shall be readily retrievable by school;
17. Retain the applications submitted by families and other documentation of eligibility for free meals or milk and reduced price meals for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified under paragraph B6 of Part IV. (210.19). School approved for Special Provision shall retain applications for three years past the last year the percentages from the base year are used (245.9(g));
18. Limit its net cash resources to an amount that does not exceed 3 months average expenditures for its nonprofit school food service or such other amount as may be approved in accordance with § 210.19(a)(2);
19. It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); all provisions required by implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR 50.3 and 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, age, disability or sex, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement. It will not discriminate against any child because of his

or her eligibility for free meals or milk or reduced price meals in accordance with the approved Free and Reduced Price Policy Statement.

20. By accepting this assurance, the program applicant agrees to compile data, maintain records and submit reports, including racial/ethnic information of enrolled students and those eligible for free and reduced price meals, to permit effective enforcement of the nondiscrimination laws and permit authorized USDA personnel during normal working hours to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, Food and Nutrition Service, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the program applicant and its successors, transferees, and assignees, as long as they receive assistance or retain possession of any assistance from the Department. The person or persons whose signatures appear on Part 1 are authorized to sign this assurance on behalf of the program applicant.
21. Pricing programs only: Maximum use of the reimbursement payment will be made to reduce the price of meals served to paying children, or to reduce the price charged to children in Option 1 of the Special Milk Program;
22. It will maintain necessary and proper facilities with sanitation and health standards in conformance with all applicable state and local laws and regulations in the storage, preparation, and service of food and milk. Food safety plans based upon Hazard Analysis Critical Control Point principals shall be maintained and updated as needed and that appropriate logs of activity shall be completed and maintained on file;
23. Follow procurement procedures in 7 CFR 3015, 220.16, 215.14a, 210.21, and 7CFR3015 to ensure that items are obtained economically and efficiently;
24. It will promote and document parent/student/community involvement as required in 210.12;
25. It will not withhold meals or milk from children as a disciplinary action;
26. It will implement offer versus serve for lunch at senior high school level; and will have a formal policy regarding offer vs. serve for all other grades for the lunch service (7 CFR 210.10), and a separate policy for breakfast (7 CFR 220.8(e)(2)(ii) and 220.8(g)(3) as designated in agreement Part 3. The components of the reimbursable meal shall be identified at or near the beginning of the serving line(s);
27. Each of the schools listed in Part 1 of this Agreement, if private, is nonprofit and exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, (7 CFR 210.2);
28. Each of the sites listed is licensed or accredited in South Dakota as defined in 7 CFR 210.2;
29. a. Every school year, each school food authority (SFA) with more than one school serving lunches, shall perform at least one on-site review of each school under its jurisdiction before February 1 of each school year.

b. Schools that serve afterschool snack shall be reviewed twice each year. The first review of each site shall be during the first four weeks of operation and the second review any time during the program operation. . If the program is year round, the first review shall occur within the first four weeks of operation in the initial year of operation and twice each school year thereafter.

c. If these reviews disclose problems with a school's meal counting or claiming procedure, the SFA shall: (a) ensure that the school develops and implements a corrective action plan; and (b) within forty-five (45) calendar days of the review, conduct a follow-up on-site review to determine that the corrective action resolved the problem. Each on-site review shall ensure that the school's claim is based on the counting system authorized in application Part 1(C) with the State Agency and that this system, as implemented, yields the actual number of reimbursable free, reduced price, and paid meals served for each day of operation;

30. Prior to submission of a monthly Claim for Reimbursement the SFA official approved to sign the claim shall complete edit checks by comparing each school's daily claim against data which will assist in the identification and correction of the claims in excess of the number of reimbursable free, reduced price, and paid lunches actually served that day to children eligible for such lunches as described in 210.8, 210.9(b)(8). It is to be assumed that the attendance factor is the same for children eligible for free and reduced price meals as the general school population;
31. It will submit accurate claims and acknowledges that failure to do so will result in the recovery of an overclaim and may result in the withholding of payments, suspension, or termination of the program. It also acknowledges that if failure to submit accurate claims reflects embezzlement, willful misapplication of funds, theft, or fraudulent activity, the penalties specified in 210.26 shall apply. (210.9, 210.25, 210.26, 215.6, and 220.6);
32. Any contract for food processing, food preparations, or food management included in Part 1(G) and submitted for the approval of the state shall be consistent with all state and federal laws and regulations (210.16) and receive approval by the state prior to becoming effective;
33. Donated food will be received according to Part 5 of this agreement and in accordance with 7 CFR 250 and applicable policies and instructions;
34. Foods donated by the Department will be accepted and used, in as large quantities as may be efficiently utilized in the nonprofit school food service;
35. Full and accurate records of the food service program(s) will be kept as outlined in 210.8 and 15, 220.7, and 215.8 to serve as a basis for claims for reimbursement and for audit and review purposes. The records to be kept with respect to each program: include the following:

RECORDS -FOR BREAKFAST, LUNCH, and SNACK

- a. Meal Eligibility and Claims
 - i. Daily number of meals served to children, by type of meal (breakfast, lunch, and snack) and eligibility classification (paid, free or reduced price unless school has been approved for special provision).
 - ii. Worksheets and edit checks used to develop the claim for reimbursement.
 - iii. Documentation of on-site review described in 4(B)(25).
 - iv. Any other documentation that is not included directly on the worksheet(s) to demonstrate compliance with 4(B)(26) & (27).
 - v. Racial/ethnic background of all students.
 - vi. Racial/ethnic background of students eligible for meal benefits, as well as for those denied meal benefits.
 - v. Applications and certification for meal benefits.
 - vi. Benefit Issuance rosters or files of those eligible for meal benefits, retrievable by month.
- b. Program Income (Receipts)
 - i. From children's payments.

- ii. From federal reimbursement.
 - iii. From adult payments.
 - iv. From all other sources, including loans to the program and any other federal reimbursement.
 - v. A la carte and other program sales.
 - vi. For NSLP Provisions 2 and 3 only: From General Funds the cost differential for children not eligible for free meal.
- c. Program Expenditures (Supported by invoices, receipts or other evidence of expenditures).
 - i. For food.
 - ii. For labor.
 - iii. All other expenditures, including repayment of loans to the Program.
 - iv. For a la carte and other program sales.
- d. Value of Donations to Program
 - i. Donated food, exclusive of food donated by the Department.
 - ii. Donated services.
 - iii. All donations other than food and services.
- e. Production and Menu Planning Records:
 - i. Planned menu with serving sizes for the day with any substitutions.
 - ii. Kinds and quantities of all foods used for the meal.
 - iii. Number of meals served - enrolled children, other children, program adults, other adults, and total.
 - iv. Date of meal served.
 - v. Labels, standardized recipes, CN product statements, product specifications, etc., that document the contributions of foods used in the meal service
- f. Verification Records:
 - i. Total number of applications on file October 1.
 - i. Percentage of applications verified.
 - ii. Summary of verification efforts, Report 742, submitted to the State Agency no later than December 15.
- g. Special Provision School Records

Recordkeeping. School food authorities of schools implementing Special Provisions shall retain records related to the implementation of the provision as outlined in 7 CFR Part 245. Failure to maintain sufficient records shall result in the State agency requiring the school to return to standard meal counting and claiming procedures and/or fiscal action. Such base year records must be retained during the period the provision is in effect, including all extensions, plus three (3) fiscal years after the submission of the last Claim for Reimbursement which employed the base year data.
- h. Provide to the state for the month of October,
 - i. the total number of children approved for reduced price meals,
 - ii. the total number of children enrolled in the school food authority as of the last day of operation in October,
 - iii. the total number of student meals served by eligibility category in October, and
 - iv. the most frequently charged full student price.

This information shall be provided either through the Claim for Reimbursement for single attendance center SFAs or through the October Site Survey for multiple attendance center SFAs. The school food authority shall submit this data to the State agency with the October claim for reimbursement, which is due no later than December 30 of each year. The State

agency may require school food authorities to provide this data for a more current month for use in the State agency claims review process. (210.8(c)(2))

- i. This information shall be used to determine a list of all elementary schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day the preceding October. The State agency may designate a month other than October for the collection of this information, in which case the list must be provided to the State agency within 60 calendar days following the end of the month designated by the State agency. In addition, each school food authority shall provide, when available for the schools under its jurisdiction, and upon the request of a sponsoring organization of day care homes of the Child and Adult Care Food Program, information on the boundaries of the attendance areas for the elementary schools identified as having 50 percent or more of enrolled children certified eligible for free or reduced price meals.

SPECIAL MILK RECORDS

- a. Daily record of milk purchases;
 - b. Daily record of milk served free to qualified students;
 - c. Daily record of milk served to adults;
 - d. Daily record of milk sold to paying students.
36. Submit reports and responses to required surveys to USDA Food and Nutrition Services and/or state agency in a timely manner. Failure to do so may result in suspension of payments until reports are submitted.
37. Afterschool care requirements. Those school food authorities with eligible schools (as defined in Sec. 210.10(n)(1)) that elect to serve meal supplements during afterschool care programs, shall agree to:
- (1) Serve meal supplements that meet the minimum requirements prescribed in Sec. 210.10;
 - (2) Price the meal supplement as a unit;
 - (3) Serve meal supplements free or at a reduced price to all children who are determined by the school food authority to be eligible for free or reduced price school meals under 7 CFR part 245;
 - (4) If charging for meals, the charge for a reduced price meal supplement shall not exceed 15 cents;
 - (5) Claim reimbursement at the assigned rates only for meal supplements served in accordance with the agreement;
 - (6) Claim reimbursement for no more than one meal supplement per child per day;
 - (7) Review each afterschool care program two times a year; the first review shall be made during the first four weeks that the school is in operation each school year, except that an afterschool care program operating year round shall be reviewed during the first four weeks of its initial year of operation, once more during its first year of operation, and twice each school year thereafter; and
 - (8) Comply with all requirements of this part, required by Sec. 210.9(b)(9)). (210.9(c) and the State Agency.
38. Access to all areas related to food preparation and service sites shall be given to personnel responsible for conducting two food safety inspections per year. Follow-up inspections and/or local requirements may increase that number.
39. Results of inspections shall be posted in a publicly visible location at the site. A copy of the report shall be provided to a member of the public upon request.

40. If a local agency operates more than one Child Nutrition Program (such as lunch, breakfast, summer), no more than two yearly inspections are required.
41. Outreach to families for the School Breakfast Program, if offered at the SFA, will be conducted twice per year. Outreach to families on the availability of Summer Food Service Program will be conducted for any area sponsor making such a request. This outreach may be done through letters, newsletters, fliers, website, etc.
42. For pricing programs, the price of student meals will be reviewed annually using the Paid Lunch Equity tool and prices shall be increased according to the Tool or nonfederal contributions in support of paid lunch meals will be placed in the School Lunch account.
43. In order to ensure that sufficient funds are provided to the food service account for foods sold in schools outside of reimbursable meals, any revenue from sale of such food shall accrue back to the food service account; and that the SFA shall review the purchase cost of obtaining any nonprogram foods sold in relation to the revenue generated by their sale to ensure that federal funds are not supporting the cost of nonprogram foods. It shall cooperate in studies and evaluations conducted by or on behalf of USDA, related to programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966.
44. As a participant in the National School Lunch Program (NSLP) and/or School Breakfast Program (SBP), it shall establish, for all schools under its jurisdiction, a local school wellness policy following USDA requirements including processes to evaluate and monitor.
45. This agreement shall become effective on the day it is executed and shall extend to the following September 30, unless suspended or terminated according to termination procedures outlined below. Payments will be made according to 7CFR210.7 and 210.8, 220.9 - 11, and 215.8 - 10 or as soon as practicable after Congress has appropriated funds.
46. This agreement may be extended from October 1 to September 30 of following years by annual amendment according to 7CFR 210.9(b), 220.7, and 215.7. Extension will be dependent upon execution of the amendment by November 30 of the amendment year. Execution will be dependent upon timely return of complete information and compliance with the terms of the current agreement.
47. This agreement may be terminated upon ten (10) days written notice on the part of either party hereto, and the State Agency may terminate this Agreement immediately upon receipt of evidence that the terms and conditions of this Agreement or the regulations have not been fully complied with by the School Food Authority. Any termination of this Agreement by the State Agency shall be in accordance with applicable laws and regulations.
48. Certain decisions which deny a SFAs application for participation or which assess an overclaim, may be appealed to the Secretary of Education, who shall name the hearing official.
49. The terms of this Agreement shall not be modified or changed in any way other than by consent in writing of both parties hereto.

PART V
FOOD DISTRIBUTION PROGRAM

SECTION I - DONATED FOODS AGREEMENT

This section applies only to those School Food Authorities (SFAs) participating in National School Lunch Program (NSLP) and/or School Breakfast Program (SBP). Schools do not receive United States Department of Agriculture (USDA) Foods for the SBP or the NSLP snack; however, USDA Foods may be used for these meals.

A. The State Agency agrees that:

1. To the extent of food available it will provide USDA donated foods to the School Food Authority designated in Part 1 for the NSLP, and, if applicable, the SBP to assist with the effective delivery of the program(s).
2. The amount of donated food will be governed by federal entitlement for each program and available bonus USDA Foods in useable quantities.

B. The School Food Authority agrees that:

1. It will accept and use in quantities as large as can be efficiently utilized in its lunch program such foods that may be offered as a donation by the USDA;
2. A School Food Authority that employs a food service management company shall require a true and accurate perpetual inventory record of receipts and withdrawals, showing a current balance of each USDA Donated Food.
3. Proper storage facilities for all USDA foods requested and accepted by the School Food Authority will be furnished. The State Agency and USDA are authorized to inspect USDA foods in storage at any reasonable time. The School Food Authority further agrees to keep its storage facilities clean, dry, orderly, temperature controlled, ventilated, locked, and use all items based on first in - first out. If recommended storage for perishables is not available within the School Food Authority's own buildings, it will be permissible to remove the USDA donated foods from its premises for the purpose of providing proper storage in local commercial locker plants or with merchants who have such plants. For offsite storage, it is necessary to maintain a current record of receipts, withdrawals, and balances. USDA donated foods shall not be stored in private homes;
4. Transfer of known USDA food items from a School Food Authority to an "unlike recipient agency" (such as a food bank) must be approved by the State Agency.
5. USDA donated foods received according to this Agreement will be used solely for the benefit of those eligible persons served by the School Food Authority and will not be otherwise disposed of or used for demonstration or tests, other than family and consumer science classes, without written approval of the State Agency. Under no circumstances will USDA donated foods be sold, exchanged or used off the premises of the School Food Authority.
6. USDA Foods will not be processed into different end-products without prior approval of the State Agency. If USDA Foods are processed into different end products, it is mandatory that a contract be entered into between the processor and the School Food Authority and that contract be approved by the State Agency prior to becoming effective.

7. It will arrange to have an Organization-Wide Audit conducted in accordance with the provisions of the Federal Office of Management and Budget Circular A-128 or A-133 if more than \$500,000 is received from all Federal sources.
8. Distribution and use of donated foods are in accordance with Part 250 of the Regulations.
9. It has and preserves a right to assert claims against other persons to whom donated foods are delivered for care, handling, or distribution.
10. It will take action to obtain restitution in connection with claims for improper distribution, use, or loss of, or damage to, donated foods.
11. Agreement may be terminated for cause by either party upon a 30-day notice.
12. The SFA/RA is responsible to the SA for any improper distribution or use of donated foods or for any loss of, or damage to, donated foods caused by their fault or negligence.
13. Use of the secure iCAN system to order USDA foods will be maintained through a unique password for each person, which will not be shared among staff members.

SECTION 2 - DELIVERY AND STORAGE OF USDA DONATED FOODS

1. SFAs will be assessed delivery and storage charges for USDA donated foods. The state pays the delivery and storage charges incurred for public schools from the federal match fund. Nonprofit schools, Bureau of Indian Education (BIE) schools, nonpublic schools, and RCCI agencies are accountable for paying delivery and storage charges to vendors responsible for delivery and storage. SFAs approved for additional delivery drops will be assessed additional charges (extra drop fees) established annually.
2. School Food Authorities (SFAs), also called Recipient Agencies (RAs) in this agreement, are responsible for supplying Child and Adult Nutrition Services (CANS), also called State Agency (SA), with contact information regarding delivery and for use in event of emergencies.
3. Delivery schedules are determined annually and will consider planned holidays when determining the schedule. Deliveries will occur between the hours of 7:00 am and 4:00 pm unless an alternate time is agreed upon between the truck driver and the school food authority. In the event of inclement weather or other circumstances, Child and Adult Nutrition Services or their designee will notify schools of the adjustments to the delivery schedule by telephone or email.
4. Prior to accepting any shipment, the SFA representative responsible for receiving shipments shall count and verify the shipment and annotate any overages, shortages, or damages on the Manifest/Receipt, provided by Child and Adult Nutrition Services. Signing, dating, and returning to Child and Adult Nutrition Services the Manifest/Receipt is acknowledgement of the SFA receiving or not receiving the product. Manifest/Receipt corrections from the SFA are used by CANS to adjust the SFA inventory.
5. SFA must notify CANS of any discrepancies within five days of receipt of the USDA Foods.
6. South Dakota seeks competitive bids to secure the contracts for delivery and storage of USDA donated food in South Dakota.

SECTION 3 - DIVISION OF DEFENSE SUPPLY CENTER PHILADELPHIA (DSCP) FRESH PRODUCE AGREEMENT WITH RECIPIENT AGENCY

The Produce Division of Defense Supply Center Philadelphia (DSCP), commonly referred to as DoD, is a worldwide provider of choice American grown, fresh fruits and vegetables. Among their customers is United States Department of Agriculture (USDA), Agriculture Marketing Services (AMS), Food Nutrition Services (FNS), National School Lunch Program (NSLP).

The Fresh Produce Program is part of Food Distribution Program within Child and Adult Nutrition Services (CANS) and the local agency agrees to participate in this project as set forth in this Agreement.

A: DEFINITIONS

1. Defense Supply Center Philadelphia (DSCP) - The office within the Department of Defense Personnel Support Center responsible for purchasing fresh fruits and vegetables for the Department of Defense's military bases and United States Department of Agriculture (USDA), Food Nutrition Services (FNS).
2. Child and Adult Nutrition Services (CANS) - The State Agency (SA), which enters into agreements with USDA Recipient Agencies (RA) for the domestic distribution of donated foods to eligible recipient agencies under this project.
3. Fiscal Year (FY) - The period beginning October 1 of each year and ending September 30 the following year.
4. Food and Nutrition Service (FNS) - The agency within USDA responsible for administering the National School Lunch Program, including the food distribution component of that program.
5. National School Lunch Program (NSLP) - The program authorized by the National School Lunch Act (42 U.S.C. 1751-1769(e)).
6. Recipient Agency (RA) - A school food authority (SFA) participating in the National School Lunch Program (NSLP) which receives donated food for its own use, has been designated by Child and Adult Nutrition Services (CANS) as eligible to place orders for fresh product under the project, and has an agreement with the CANS for the project.
7. School Year (SY) - The period beginning July 1 of each year and ending June 30 of the following year.

B: STATE AGENCY PARTICIPATION IN THE PROJECT

1. Child and Adult Nutrition Services (CANS, the State Agency (SA)) shall designate a portion of its current year USDA Food entitlement under Section 6 (e) of the National School Lunch Act (42 U.S.C. 1755(e)) to be used to procure fresh product under the project according to preferences from the recipient agencies. The SA shall inform FNS of the exact amount it has designated for such use under the project.
2. Amounts set aside for the fresh produce shall be counted against Child and Adult Nutrition Services (SA) available USDA Food entitlement under section 6(e) of the National School Lunch Act (42 U.S.C. 1755 (e)).

3. Child and Adult Nutrition Services SA shall allot fresh produce in accordance with this agreement in the amount that it designates for the project. The SA will monitor product orders of its RAs to help ensure that the full-designated amount is used but not exceeded.
4. The SA shall comply with all applicable provisions of the Federal-State agreements (Form FNS-74) covering USDA food donations to the SA for the NSLP, including the requirement that USDA Foods use complies with 7 C.F.R. Part 250.

C: ORDERING SYSTEM

1. Child and Adult Nutrition Services (SA) shall provide the DSCP with a list of RAs designated by the SA with the authority to order fresh product.
2. Child and Adult Nutrition Services hereby enters into agreement with participating RAs and requires the following:
 - a. School Food Service Authority or Recipient Agency (SFA/RA) shall place orders for fresh product directly with DSCP using the internet Fresh Fruits and Vegetables Order Receipt System (FFAVORS WEB) or other designated method;
 - b. When ordering fresh product, SFA/RA shall use the assigned User ID and PIN provided by the DSCP;
 - c. When ordering fresh product, the SFA/RA shall identify any unique ordering requirements (e.g., count, size, or grade) for DSCP to ensure that accurate quality and quantity of fresh product are purchased.
 - d. The SFA agrees to monitor product orders to ensure that the full-designated amount is used but not exceeded.
3. FNS will ensure that all requirements are met related to the ordering and purchasing of the fresh produce to SFAs/RAs on behalf of DSCP.
4. SFAs/RAs may order fresh produce through the DSCP beyond their established entitlement; however, the SFA/RA is responsible for payment of bills for such produce to DSCP or their vendor, according to established procedure.

The SFA/RA may also order "out of country" product through DSCP; however, the SFA/RA will be responsible for payment of bills for such produce to DSCP or their vendor, according to established procedure.

D: SHIPMENT AND DELIVERY

1. As set forth in Part IX of the agreement between DSCP, FNS will ensure that DSCP completes all requirements related to the shipment and delivery of the fresh product to the RAs.
2. Prior to the initial shipment of fresh product under this project, Child and Adult Nutrition Services shall provide DSCP with names, addresses, phone numbers, and normal delivery hours of all delivery points for each RA.
3. RAs participating in Fresh Produce option agree that:
 - a. Prior to accepting any shipment, SFA/RA shall count and verify the shipment and annotate any overages or shortages on the vendor's ticket or government bill of lading;

- b. Prior to accepting any shipment, SFA/RA shall inspect the fresh product and notify, using FFAVORS WEB, DSCP if there is any nonconformance, such as product quality or product damaged during shipment, to determine disposition of the product. This must be done within 24 hours of delivery. DSCP shall evaluate any nonconforming fresh product, utilizing field buyers, DSCP Produce Specialists or FNS representatives, and advise the SFA/RA as to whether to accept or reject the product and what actions to take if the fresh product that has been accepted is later determined to be nonconforming;
 - c. Acceptance of a shipment shall be made by signing the delivery ticket or government bill of lading;
 - d. The SFA/RA shall complete evaluation forms that solicit information on the quality, condition, timeliness, delivery, and cost of the fresh produce and the quality of DSCP service.
- 4. Title to the fresh product shall pass to the SFA/RA upon the acceptance of the fresh product at the time and place of delivery.
 - 5. This section is limited to the purchase of fresh product for use in the NSLP (including afterschool snack) and SBP annually and this agreement shall terminate upon the close out and resolution of any outstanding claims or other issues arising from the purchase, delivery and use of such USDA Foods annually.

PART 6
POLICY STATEMENT FOR FREE AND REDUCED-PRICE MEALS AND/OR FREE MILK

- A. The School Food Authority, having requested participation in the National School Lunch Program for lunches and or snacks, the Regular or Severe Need School Breakfast Program including the Seamless Summer Option, and/or the Special Milk Program accepts responsibility for providing free and reduced price lunches breakfasts, and/or snacks, and free milk as applied for and approved, to eligible children for each school day during the school year in the school(s) under its jurisdiction.
- B. The School Food Authority assures Child and Adult Nutrition Services that it will uniformly and fully implement the following policy in accordance with 7 CFR Part 245 to determine children's eligibility for free and reduced price meals or free milk in the School Breakfast Program, Special Milk Program, and/or National School Lunch Program under its jurisdiction. In fulfilling its responsibilities, the School Food Authority agrees that it will:
- 1a. As a pricing meal program,
- Serve meals free to children from families whose income meets free income eligibility guidelines listed in Attachment A or who are categorically eligible or directly certified as eligible for free meals. In addition, the SFA will provide these benefits to children from families who are experiencing unemployment, which causes the family income to fall within the criteria set forth.
- Carry over the prior year's meal eligibility status for thirty (30) school days into the new school year or until new eligibility information is obtained, whichever comes first.
- Serve meals at a reduced price to children from families whose income meets the reduced price income eligibility guidelines in Attachment A. An SFA must charge \$.40 or less for reduced price lunches, \$.30 or less for reduced price breakfasts, and/or \$.15 for snacks. [Part 245(2) and 210.9(c)(4)]
- 1b. As a nonpricing meal program, serve meals without charge to all children and claim reimbursement according to approved applications for free and reduced price meals on file.
- 1c. As a nonpricing Special Milk Program, serve all milk without charge and claim at the standard rate or cost, whichever is less.
- 1d. As a pricing Special Milk Program, implement a policy to a) determine children's eligibility for free milk based on the free income eligibility guidelines listed on Attachment A, or b) charge the same rate to all children regardless of ability to pay.
2. Not physically segregate, nor allow any other discrimination against any child because of his/her eligibility category. The names of the children eligible to receive free or reduced price meals or free milk shall not be published, posted, or announced in any manner and there shall be no overt identification of any such children by use of special tokens or tickets or any other means. Further assurance is given that children eligible for free or reduced price meals or free milk shall not be required to:
- a. Work for their meals and/or milk.
- b. Use a separate area.
- c. Go through a separate serving line.
- d. Enter the serving area through a separate entrance.
- e. Be served meals/milk at a different time.
- f. Receive a meal/milk different from the one sold to children paying the full price.

- g. Receive tickets, tokens or other eligibility documents from a place that is separate from where the paying child receives his or her eligibility documents.
3. Designate the person listed in Part 2(D)(2) to review applications and direct certification letters and make determination of eligibility. This official will use the criteria outlined in this policy and in USDA's Eligibility Guidance for School Meals Manual to determine eligibility.
4. Obtain documentation for free or reduced price meals or free milk on a SMP pricing option 2 program as indicated in Part 2(B). Each child's parent or guardian will be provided with a letter as outlined herein indicating that they are directly certified for free meals or milk or how to apply for free or reduced price meals, including an application form for free or reduced price meals, or free milk in a Special Milk pricing option 2 program at the beginning of each school year (See applicable Attachments B1, B2, and B3).

The local educational agency will determine eligibility for free and reduced price meals or free milk in accordance with the current Income Eligibility Guidelines for children who are not categorically eligible for free and reduced price benefits.

Applications may be filed at any time during the year. Any parent/guardian enrolling a child in a school for the first time at any time during the year, shall be supplied with information for the application process for free and reduced price meals. If a child transfers from one school to another under the jurisdiction of the same School Food Authority, the child's eligibility for a free, reduced price meal, or free milk will be transferred to and honored by the receiving school.

Schools will directly certify (immediately accept and give the free eligibility status) children when documentation of that status comes through for children who are a member of a household eligible for SNAP, TANF, FDPIR; or children who are foster, migrant, runaway, or homeless.

All children from a household will receive the same benefits unless documentation proves otherwise. Parents or guardians will promptly be notified individually of the acceptance or denial of their eligibility. (Child and Adult Nutrition Services recommends notification within 10 working days.) Children will be served meals/milk at the approved rate immediately upon the establishment of their eligibility.

When an application is denied, parents/guardians will be informed of the reason for denial and the hearing procedures in writing by the designated hearing official named in Attachment F. Hearing procedures shall follow those forth in § 245.7 (see part 8 of this section) and the nondiscrimination practices set forth in § 245.8

This hearing official must be someone not involved in the original eligibility determination. It is suggested that the hearing official hold a position independent of, or superior to, that of the determining official.

NOTE: A child residing in a Residential Child Care Institution (RCCI) is classified as a family of one with the money available to the child considered as the child's total income. A roster listing the child's name, social security number if available, and income, along with the dates of admission and departure, is sufficient to demonstrate eligibility. Those 21 and over are not eligible to receive a reimbursable meal in an RCCI. Boarding Schools and Community Service Providers are not considered to be an RCCI.

5. Establish a procedure to collect money from children who pay for their meals or milk and to account for the number of free, reduced price, and full price meals or free and full price milk

served. The procedures described in Part 1(C) and Part 2(E) will be used so that no other child in the school will consciously be made aware by such procedure of the identity of the children receiving free or reduced price meals or free milk.

6. Use the Application for Free and Reduced Price Meals or Free Milk (Attachments B1, B2, and B3) as prescribed by the State Agency. Child and Adult Nutrition Services must approve any alterations of applications, public announcements, etc., prior to implementation. Such changes will be effective only upon approval. All changes in eligibility criteria must be publicly announced in the same manner used at the beginning of the school year.
7. Verify applications for free and reduced price meals by November 15 and document results in accordance with 7 CFR 245, Eligibility Guidance for School Meals Manual, and SD Child Nutrition Program Guidance. RCCIs with no day students and SFAs approved for Special Provisions outside of the base year are exempt from verification requirements.
8. Pricing Programs Only: Establish and use a fair hearing procedure for parents' appeals of the SFA determining official's decision on applications and for school officials' challenges to the correctness of information contained in an application or to the continued eligibility of any child for free or reduced price meals or free milk. During the appeal and hearing, the child will continue to receive free or reduced price meals or free milk. A record of all such appeals and challenges and their dispositions shall be retained for three (3) years.

Prior to initiating the hearing procedure, the parent/guardian or SFA official may request a conference to provide an opportunity for the parent/guardian and SFA official to discuss the situation, present information, and obtain an explanation of data submitted in the application and decisions rendered. Such a conference shall not in any way prejudice or diminish the right to a fair hearing.

The hearing procedure shall provide the following:

- a. A publicly announced, simple method for making an oral or written request for a hearing.
- b. An opportunity to be assisted or represented by an attorney or other person.
- c. An opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal.
- d. Reasonable promptness and convenience in scheduling a hearing and adequate notice as to the time and place of the hearing.
- e. An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference.
- f. An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses.
- g. That the hearing be conducted and the decision made by a hearing official who did not participate in the decision under appeal or any previously held conference.
- h. That the decision of the hearing official be based on oral and documentary evidence presented at the hearing and made a part of the hearing record.
- i. That the parties concerned and any designated representative thereof be notified in writing of the decision of the hearing official.

- j. That for each hearing a written record be prepared, including the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official and the reasons therefore, and a copy of the notification to the parties concerned of the hearing official's decision.
- k. That such written record be preserved for a period of three (3) years and shall be available for examination by the parties concerned or their representatives at any reasonable time and place during such period.
- l. Actions that adversely affect a family's eligibility shall be made ten (10) operating days from the date of family notification. Actions that increase a family's benefits shall be within three (3) operating days.